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442316—42

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 866

L. L. SKAGGS, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 15–21) is reported in 38 B. T. A. 921. The opinion of the Circuit Court of Appeals (R. 41–46) is reported in 122 F. (2d) 721.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 22, 1941 (R. 46). The time for filing a petition for a writ of certiorari was extended to and including January 21, 1942 (R. 47). The petition for a writ of certiorari was filed Jan-

uary 13, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The taxpayer purchased real estate in California in 1926. He married in 1929, and, while domiciled in Texas in 1934, he received rents from that property. Under California law the real estate as well as the rents were the husband's separate property. Under Texas law, the rents from real estate separately held are treated as community income. Are those rents taxable in full to the husband, or is he taxable only to the extent of one-half thereof?

STATUTES INVOLVED

The statutes involved will be found in the Appendix, *infra,* pp. 6–11.

STATEMENT

The material facts as stipulated (R. 34–36) and as found by the Board of Tax Appeals (R. 15–16) are substantially as follows:

The petitioner was domiciled in Texas in 1934, and for many years prior thereto (R. 15, 34). In January 1929 he married for the second time, having been previously married and divorced (R. 15, 34).

In 1926, prior to his marriage, he had acquired improved real estate in Oakland, California,

which was leased during 1934 and produced a net rent of $11,468.28 (R. 15, 34).

In his income-tax return for 1934 the taxpayer reported only one-half of the rent from that property upon the theory that the income from this source constituted community income of himself and his wife (R. 15–16, 35).

The Commissioner determined that the total income from this source constituted the separate income of the taxpayer and asserted a deficiency (R. 9, 15). The Board reversed the Commissioner's action (R. 23), but the Circuit Court of Appeals, one judge dissenting, reversed the Board (R. 41–46) and sustained the Commissioner.[1]

ARGUMENT

This case was correctly decided and does not present a conflict of decisions.

It is not disputed that the California real estate was the separate property of the husband under the law of either California or Texas. And it is not disputed that the rent therefrom was the separate property of the husband under California law. See Section 163, California Civil Code, Appendix, *infra*, p. 7. But petitioner contends that since, under Texas law, the rents from sep-

[1] Another item involving income from gain on sale of stock, separately held by the husband, was also decided in favor of the Commissioner by the court below, but the petition does not seek review of that portion of the decision (Pet. 6).

arately held property are community income,[2] he is chargeable with only one-half the rents involved herein.

However, it is plain that California, having the undoubted power to determine the rights and incidents of ownership with respect to real estate situated within its borders, may determine the rights with respect to the rents which flow therefrom. This California has done; and it has decreed that rents derived from separately held real estate belong to the owner of the real estate alone, rather than jointly to the owner and his spouse.

The court below correctly gave effect to these provisions, and sustained the determination of the Commissioner to tax all of the rents to the husband. Its decision is not in conflict, as alleged by petitioner, with *New York ex rel. Cohn* v. *Graves,* 300 U. S. 308. The latter case simply held that New York could constitutionally tax income received by a citizen of New York which had been derived from New Jersey real estate. It is not in the least inconsistent with the view that New Jersey may determine *who* shall be entitled to the rents when they accrue; it merely holds that once the rents accrue, under New Jersey law, in favor of a citizen of New York, New

[2] It may be conceded *arguendo* that rents from property separately held in Texas constitute community income to Texas spouses; but it is far from clear, even under Texas law, that the same rule applies with respect to real estate situated *outside* of Texas.

York may include such rents in the measure of the tax which it seeks to collect from him.

Here, California has determined that the rents from separately held real estate belong to the owner, and it is upon such income that the federal tax is imposed. It cannot be material that Texas may undertake to superimpose its system of law over that of California by declaring that once the rents are received by the husband as his separate income and property in California they shall thereafter belong equally to each spouse.[3] Cf. *Lucas* v. *Earl*, 281 U. S. 111; *Helvering* v. *Eubank*, 311 U. S. 122; *Helvering* v. *Horst*, 311 U. S. 112.

CONCLUSION

The case was correctly decided by the court below. There is no conflict of decisions. The petition should be denied.

Respectfully submitted.

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FEBRUARY 1942.

[3] As indicated in the preceding footnote, there is serious doubt whether Texas has so undertaken to define the rights of its citizens with respect to out-of-state real estate. Petitioner has not referred to a single Texas decision holding that income from separately held out-of-state property is to be treated as community income.